

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

James T. Burke, :
Petitioner, :
 :
v. : File No. 2:12 CV 197
 :
Andrew Pallito, Commissioner, :
Vermont Department of :
Corrections, :
Respondent. :

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed January 18, 2013. Petitioner's objections were filed February 4, 2013.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

IT IS HEREBY ORDERED that the Respondent's Motion to Dismiss (Doc. 8) is DENIED and Petitioner's unexhausted

ineffective assistance of counsel claim is deleted from the pending petition. It is further ORDERED that Respondent's Motion for an Extension of Time (Doc. 16) is GRANTED. The Court orders the Respondent to answer the petition within sixty days from the date of this Order. In addition, Petitioner's Motion for Default Judgment (Doc. 20) is DENIED and Petitioner's Motion for Summary Judgment (Doc. 10) is DENIED without prejudice.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

Dated at Burlington, in the District of Vermont, this 8th day of February, 2013.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge